

REVISION TO THE AGREEMENT
BETWEEN
THE U.S. DEPARTMENT OF AGRICULTURE,
THE COMMODITY CREDIT CORPORATION
AND
THE STATE OF ILLINOIS
CONCERNING THE ADMINISTRATION OF THE ILLINOIS
CONSERVATION RESERVE ENHANCEMENT PROGRAM

This revised Agreement (henceforth, "Agreement") is entered into between the U.S. Department of Agriculture (USDA), the Commodity Credit Corporation (CCC), and the State of Illinois (Illinois) to implement the Conservation Reserve Enhancement Program (Enhancement Program) for enhancement of water quality by reduction of sediment and nutrients and the enhancement of wildlife habitats for rare and declining species and for State and federally listed threatened and endangered species in the Illinois River and Kaskaskia River watersheds.

This Agreement supersedes all earlier CREP Agreement provisions between USDA, CCC and Illinois. For all existing CRP contracts enrolled into this project before this Agreement is approved and implemented, the earlier Agreement provisions will continue to apply and be adhered to between USDA, CCC and Illinois during the life of those CRP contracts. All acreage enrolled under the earlier Agreement provisions will also be cumulatively applied to the total project acreage ceiling established under this new revised agreement in Section III.A.

I. General Provisions

The purpose of this Agreement is to allow, where deemed desirable by USDA, CCC, and Illinois, certain acreage in the Illinois River and Kaskaskia River watersheds to be enrolled under the Enhancement Program.

The Enhancement Program in Illinois will be driven by locally led conservation efforts that show landowner support and demonstrate a need for the Enhancement Program. The Enhancement Program will be the vehicle for a partnership between landowners, land operators, governmental entities, and non-governmental organizations in addressing watershed quality problems. The goals for the Enhancement Program, when fully enrolled, are to:

1. Reduce the amount of silt and sedimentation entering the main stem of the Illinois and Kaskaskia Rivers by 20 percent;

2. Reduce the amount of phosphorus and nitrogen in the Illinois River and Kaskaskia River by 10 percent;
3. Increase, in the Illinois River and Kaskaskia River watersheds, by 15 percent the populations of waterfowl, shorebirds, grassland birds, and State and federally listed threatened and endangered species such as bald eagles, egrets, and herons;
4. Increase the native fish and mussel stocks by 10 percent in the lower reaches of the Illinois River (Peoria, LaGrange and Alton reaches); and
5. Help meet federal goals to reduce nitrogen loading to the Mississippi River and Gulf of Mexico, thereby helping to reduce hypoxia in the Gulf of Mexico.

This Agreement is not intended to supersede any rules or regulations that have been or may be promulgated by USDA, CCC, Illinois or any other Governmental entity participating in this Enhancement Program.

II. Authority

A. Federal

The CCC has the authority under the provisions of the Food Security Act of 1985, as amended (1985 Act) (16 U.S.C. § 3830 *et seq.*), and the regulations at 7 CFR part 1410 to perform all its activities outlined in this Agreement.

B. State

Illinois has the statutory authority to perform the activities of this Agreement pursuant to the Intergovernmental Cooperation Act (5 ILCS 220), the Soil and Water Conservation Districts Act (70 ILCS 405), the Fish and Aquatic Life Code (515 ILCS 5), the Wildlife Code (520 ILCS 5), and the Civil Administrative Code of Illinois (Part 13.5) (20 ILCS 805).

III. Program Elements

USDA, CCC, and Illinois agree that:

- A. The Illinois Enhancement Program will consist of a Federal continuous sign-up CRP component and a voluntary Illinois incentive program. This Agreement provides for the enrollment of up to 232,000 acres of certain environmentally-sensitive acreage in the Illinois and Kaskaskia River Watersheds.
- B. The 232,000 acres to be enrolled under this Enhancement Program will consist of eligible cropland and marginal pastureland within the area designated as the Illinois and Kaskaskia River watersheds as shown on the attached Map 1.

C. Two categories of eligible land are authorized for enrollment under this project:

1. Flooded and/or Wetland Riparian areas, which shall be defined to be cropland or marginal pastureland that is either of the following:

- Within the 100-year floodplain of the Illinois and Kaskaskia Rivers and their tributary stream systems depicted on Map 1, or
- For wetland restoration purposes only, is located within the watersheds depicted on Map 1 and is determined by NRCS to be either a farmed wetland, a prior converted wetland or a wetland farmed under natural conditions; and

2. Highly Erodible Riparian areas, which for this purpose shall be defined to be cropland that:

- Has a weighted average Erodibility Index (EI) of 8 or greater as determined by the USDA's Farm Service Agency (FSA), and is immediately adjacent to a riparian area within the 100 year floodplain. The landowner must enroll any eligible adjacent riparian area in the Enhancement Program or other CRP enrollment opportunity.

D. Land may also be enrolled if it is adjacent to lands enrolled under paragraph (C) of this section and is determined to be infeasible to farm according to National CRP Directives.

E. The eligible CREP practices for the Illinois Enhancement Program will be:

1. For lands qualifying as riparian buffers or wetlands:

CRP Cropland Practice CP 3A (Hardwood Tree Planting)
CRP Cropland Practice CP 4D (Permanent Wildlife Habitat, Noneasement)
CRP Cropland Practice CP 9 (Shallow Water Areas for Wildlife)
CRP Cropland Practice CP 11 (Vegetative Cover - Trees Already Established)
CRP Cropland Practice CP 12 (Wildlife Food Plot)
CRP Cropland Practice CP 21 (Filter Strip)
CRP Cropland and Marginal Pastureland Practice CP 22 (Riparian Buffer)
CRP Cropland Practice CP 23 (Wetland Restoration)
CRP Cropland Practice CP 25 (Rare and Declining Habitat); and

2. For lands qualifying on the basis of erodibility (which must have an $EI \geq 8$):

CRP Cropland Practice CP 2 (Establishment of Permanent Native Grasses)

CRP Cropland Practice CP 3 (Tree Planting)

CRP Cropland Practice CP 3A (Hardwood Tree Planting)

CRP Cropland Practice CP 4D (Permanent Wildlife Habitat, Noneasement)

CRP Cropland Practice CP 12 (Wildlife Food Plot)

CRP Cropland Practice CP 25 (Rare and Declining Habitat).

- F. In determining CCC's share of the cost of practice establishment, CCC shall use the appropriate conservation practices used for other CRP contracts. All conservation practices shall be in accordance with USDA policies for similar enrollments, except when such policies are inconsistent with rules or regulations promulgated by CCC. Where CRP Practice CP 21 (Filter Strip) is installed along perennial streams depicted on the USGS topographical maps, other practices may be approved for installation alongside the filter strip so long as the total width of the land placed under the CRP contract, and for which the cost share is received, does not exceed 234 feet.
- G. All CRP contracts for land enrolled in the Enhancement Program will be not less than 14 years or more than 15 years and will be subject to all normal CRP provisions as provided for in the CRP regulations. Program participants will also have the opportunity, as described herein, to enter into the State Incentive Program and either extends the benefits of the CRP contract for another 15 or 35 years through an easement with Illinois, or receive payment from Illinois in return for executing a voluntary permanent easement with Illinois.
- H. Eligible producers will not be denied the opportunity to offer eligible acreage for enrollment during other CRP enrollment periods.

IV. Federal Commitments

USDA and the CCC will:

- A. Determine eligibility for participation in the CRP portion of the Enhancement Program consistent with the regulations at 7 CFR Part 1410 and administer those CRP contracts that are executed.
- B. Pay 50 percent of the reimbursable establishment costs of CRP conservation practices as provided in National CRP Directives. Reimbursements to Enhancement Program participants from all sources may not exceed 100 percent of the costs of such practices.

- C. Make rental payments for land enrolled under the CRP contract, including marginal pastureland, using the prevailing applicable CRP posted soil rental rates for cropland, subject to such further payments as are provided for in paragraphs D. and E. of this section.
- D. Make incentive payments, as a percentage of the basic CRP maximum annual payment rate otherwise applicable to the land under CRP, in an amount equal to:
 - 1. 30 percent with respect to lands enrolled in contracts subject to this Agreement as specified in paragraph III. C.1.
 - 3. 20 percent with respect to lands enrolled in contracts subject to this Agreement as specified in paragraph III. C.2.
- E. Provide the normal CRP annual maintenance payment as part of the annual CRP rental payment in accordance with National CRP Directives.
- F. Provide information to landowners concerning this Enhancement Program and technical assistance for the Enhancement Program.
- G. Permit successors-in-interest to contracts enrolled under this Enhancement Program in the same manner as allowed generally for other CRP contracts.
- H. Permit assignment of payments from participants enrolled under the provisions of this Enhancement Program to the State of Illinois only if the assignment is requested by the participant and CCC determines that such assignment will not jeopardize CCC's interests.
- I. Pay the normal CRP Practice Incentive Payment (PIP) for eligible conservation practices in accordance with National CRP Directives.
- J. Pay the normal CRP Signing Incentive Payment (SIP) for eligible conservation practices in accordance with National CRP Directives.
- K. All payments made under paragraphs C, D, E, I, and J, above, will be considered rental payments for payment limitation purposes.

V. State Commitments

Illinois agrees to:

- A. Enroll landowners who decide to participate in the State Incentive Program by choosing to either execute a 15-or 35-year easement with Illinois or granting a voluntary permanent easement to Illinois. Landowners may enroll in one of the State options either at the time of CRP enrollment or prior to the end of

this Agreement. Landowners may participate in the Federal portion of the Enhancement Program without participating in the voluntary Illinois incentive program.

B. Contribute not less than 20 percent of the overall program costs:

1. By providing additional incentives to landowners who voluntarily execute an easement with Illinois beyond the 14-15-year Federal contract equal to:
 - (a) A bonus payment to the landowner for a voluntary permanent easement on CRP enrollments in this program. The bonus payment will be a lump sum payment equal to the CRP maximum annual payment rate (exclusive of any incentive payments) times 15 years times 30 percent; or
 - (b) A bonus payment to a landowner for a 15- or 35-year easement. The payment for a 15-year easement will be a lump sum payment that will equal 50 percent of the payment rate for a voluntary permanent easement. The payment for a 35-year easement will equal 75 percent of the payment rate for a voluntary permanent easement.

Illinois may adjust the payment formulas in (a) and (b) above to increase bonus payments to landowners.

2. By providing additional reimbursement for the costs of implementing approved conservation practices that is equal to:
 - (a) A 50 percent reimbursement of the cost to implement approved conservation practices on lands that are enrolled in permanent easements;
 - (b) A reimbursement up to 40 percent of the costs to implement approved practices for lands enrolled in the 15- or 35-year easement with Illinois; and
 - (c) By paying eligible costs of conservation practices over the amount paid by CCC in Section IV. B
3. By paying costs for streambank stabilization techniques within the eligible area defined in III. B. that contribute to the goals of the Enhancement Program, through the Illinois *Partners for Conservation* and other state or local initiatives;
4. By paying for all costs associated with Illinois' annual monitoring program as described in this Agreement;

5. By providing technical assistance as provided in this Agreement;
 6. By paying costs or having costs paid by a non-federal partner for conservation practices established on lands within the Enhancement Program project area which assist in meeting program goals; and
 7. By paying costs or having costs paid for by a non-federal partner for permanent easements or fee simple acquisition of properties within the Enhancement Program project area which will assist in meeting program goals through restoration and/or protection.
- C. To determine the overall cost of the Enhancement Program, the following costs will be used:
- The total costs to remove the land from production, which will include the CRP payments made by the CCC and the easement payments or the bonus payments made by Illinois;
 - The total reimbursement for conservation practices paid by the CCC, the State of Illinois, and other non-federal sponsors;
 - The total costs of permanent easements or fee simple acquisitions pursuant to the provisions of V.B.7;
 - The total costs of the annual monitoring program; and
 - The aggregate costs of technical assistance, including those reasonable expenses incurred by Illinois for implementing contracts and easements, and a reasonable estimate of the costs incurred by Illinois to develop conservation plans for land enrolled in the Enhancement Program.

Since the CRP contract payments will be annual payments, the current OMB Circular percent per annum discount rate will be used to compare the CRP payments with the State incentive payments. In the unlikely event that the State has not obligated 20 percent of the overall costs, the State will fulfill its obligations and pay the shortfall to CCC within 90 days after the expiration of this Agreement or other mutually agreed upon date.

- D. Seek applicants willing to offer eligible and appropriate land enrollment in the Enhancement Program.
- E. Assist in the development of Conservation Plans for approved CRP contracts.

- F. Provide technical assistance through the local soil and water conservation districts (SWCDs) and appropriate field staff from other Illinois agencies.
- G. Develop and implement an annual monitoring program designed to evaluate the overall success of the project in meeting its objectives. The annual monitoring program will include, but not be limited to, incorporation of components of existing programs that currently monitor parameters related to the goals of the Enhancement Program such as the *Critical Trends Assessment Program*, the *Illinois T by 2000 Transect Surveys*, *Illinois River Watch Network*, and the *Illinois Ambient Water Quality Monitoring Network*.
- H. Prepare an annual report to FSA that includes: level of program participation, the results of the annual monitoring program, and a summary of non-federal Enhancement Program expenditures.
- I. Establish an Enhancement Program Advisory Committee as a subcommittee of the Illinois State Technical Committee. This committee will provide guidance to Illinois on the implementation of the Enhancement Program, outreach, further refinement of conservation practices, targeting, and other program details. This committee will prepare an annual report for submission to FSA on the status of the Enhancement Program and monitoring results.
- J. Ensure that participation in the Enhancement Program is coordinated with participation in other State and Federal agricultural and natural resource conservation programs including the Illinois Integrated Management Plan for the Illinois River Watershed, the Comprehensive Plan for the Restoration of the Illinois River Watershed, An Ecosystem Approach to Issues & Opportunities in the Kaskaskia River Watershed, *Partners for Conservation* within the State agencies, *Illinois Rivers 2020*, the Illinois Environmental Protection Agency's *Targeted Watershed Program*, the Illinois Fish and Wildlife Action Plan, and the Mississippi River Basin Healthy Watershed Initiative.
- K. Develop a program for continuous public involvement with respect to Illinois participation in the Enhancement Program. This will include the establishment of teams of stakeholders with an interest in this program.
- L. Temporarily release participants from any contractual or easement restriction crop production during the CRP contract period if such release is determined necessary by the U.S. Secretary of Agriculture or the State of Illinois in order to address a State or national emergency.


VI. Other Provisions

- A. CRP contracts executed under this Agreement will be administered in accordance with the CRP regulations at 7 CFR Part 1410 and other program authorities.
- B. The Executive Vice President, CCC, or the Deputy Administrator for Farm Programs, Farm Service Agency, or their designees, are delegated the authority to carry out or modify (in accordance with paragraph C below) this Agreement for CCC and USDA consistent with the provisions of the 1985 Act, the regulations at 7 CFR Part 1410, and the provisions of this Agreement. The Directors of the Illinois Departments of Agriculture and Natural Resources, or their designees, are delegated the authority to carry out this Agreement for Illinois.
- C. This Agreement, or any portion thereof, may only be modified by written agreement between parties.
- D. The provisions within this Agreement may be subject to annual appropriations or other funding limitations imposed with respect to the USDA, CCC, or the State of Illinois. This Agreement may be modified or extended upon mutual written agreement or cancelled unilaterally by the CCC or Illinois. Such cancellation or termination will not alter existing obligations with respect to executed agreements with individual program participants or affect reporting requirements provided for in this Agreement.
- E. All other terms of the Agreement and previous amendments shall remain unchanged and in effect and no other agreements shall be of any force or effect unless reduced to writing and signed by all necessary parties.
- F. No lands may be enrolled under this program until the USDA's CREP Program Manager approves a detailed Illinois amendment to the National CRP Directives which will provide a thorough description of this program and applicable practices, and until completion of the appropriate level of environmental analysis required by the National Environmental Policy Act of 1969, as amended, and related Statutes, Executive Orders and Departmental Regulations, and in accordance with 7 CFR 799.
- G. Illinois and the USDA agree to share appropriate data, in accordance with the procedures, restrictions and exemptions established under the Freedom of Information Act, federal privacy laws, including Section 1619 of the Food, Conservation, and Energy Act of 2008 (Public Law 110-234, section 1619), Section 2004 of the Farm Security and Rural Investment Act of 2002 (Public Law 107-171, section 2004), and other applicable laws, with the State to

facilitate State monitoring efforts according to the provisions in the Memorandum Of Understanding between the Illinois State FSA Office and the State of Illinois CREP Cooperators.

So agreed:

- A. On behalf of the United States Department of Agriculture and the Commodity Credit Corporation:



Brandon Willis
Deputy Administrator for Farm Programs
Farm Service Agency and
Deputy Vice President
Commodity Credit Corporation

10/22/10
Date

- B. For the State of Illinois



Pat Quinn
Governor

10/25/10
Date

Map 1

